IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-24-03-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM

The Hon'ble Mr. Justice D. MURUGESAN
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

Writ Petition No. 18366 of 2003

and W.P.M.P.No. 22963 of 2003.

A. Joseph Louis,
No.7-B, Crawford Colony,
Trichy-12. .. Petitioner.

Vs.

1. The District Welfare Fund Committee,
   represented by its President, the
   District Collector,
   Mc. Donalds Road, Cantonment,
   Trichy-1.

2. N. Balasubramanian,
   No.24, Govinda Konar Street,
   Sangiliandapuram,
   Trichy-1.

3. State of Tamil Nadu,
   represented by the Commissioner,
   Land Administration, Chennai. .. Respondents.

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Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to accept the highest Tender of Rs.2,07,999/- per month made by the petitioner herein in respect of lease of "Thiyagaraja Bagavathar Mandram" cinema theatre, Kalaiarangam, Trichy-1.

Mr. P.S. Raman, Senior counsel for Mr. P.R. Raman:- For petitioner.

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Mr. R. Yashodvardhan for Mr. K. Kannan:- For 1st Respondent.

Mr. N.R. Chandran, Advocate General for Mr. R. Natarajan:- For 2nd Respondent.

Mr. V. Raghupathy, Government Pleader:- For 3rd Respondent.

ORDER

(Order of Court was made by P. Sathasivam, J.,)

This Writ Petition is filed by one A. Joseph Louis against District Welfare Fund Committee represented by its President-District Collector, Trichy-1, N. Balasubramanian, Trichy-1 and State of Tamil Nadu represented by Commissioner, Land Administration, Chennai for a Writ of Mandamus, directing the first respondent-District Welfare Fund Committee to accept the highest Tender of Rs.2,07,999/- per month made by him (petitioner) in respect of lease of "Thiyagaraja Bagavathar Mandram" Cinema Theatre, Kalaiarangam, Trichy-1.

2. First, the Writ Petition came before the First Bench consisting of Hon'ble The Chief Justice and D. Murugesan, J. The Division Bench based on the averments in the affidavit and counter affidavit and after finding a prima facie opinion that the first respondent-Committee did appear to be performing public functions, expressed their inability to follow the earlier Division Bench decision of this Court in W.P.Nos. 1043 and 1896/2002 and 23534 and 26501/2001 dated 26-2-2002 holding that the Writ Petition against the first respondent is not maintainable and referred the matter to this Larger Bench.

3. The text of the Reference made to the Larger Bench is reproduced hereunder:

> "12. In Management of GE Power Controls India (Pvt) Ltd., & another v. Workmen of GE Power Controls India Pvt. Ltd., & others (2005 1 L.W. 126), it has been held that ordinarily no writ lies against a body, which is not an instrumentality of the State, unless it is performing public functions. The entire case law on this point has been considered in great detail (vide General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad (2003 (8) SCC 639).
>
> 13. In our opinion, though the petitioner may not able to lay adequate factual foundation in paragraph-8

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of its affidavit that the first respondent is an instrumentality of the State, yet we are prima facie of the opinion that the first respondent does appear to be performing public functions, as is evident from the factual allegations in the writ petition and in the counter affidavit of the first respondent. In fact, in paragraph-11 of the counter affidavit of the first respondent, it is stated "District Welfare Fund Committee is using every one of the resources only for the upliftment of the poor and downtrodden. The funds are spent only for the poor and needy".

14. In our opinion, the work of upliftment of poor and downtrodden is certainly a public function in a Welfare State, as it is the duty of the State to uplift the poor and downtrodden, in view of the mandate in the Directive Principles of State policy contained in Part-IV of the Constitution. In view of the above, we are of the opinion that the decision of the Division Bench of this Court in W.P.Nos. 1043 and 1896 of 2002 and 23534 and 26501 of 2001 dated 26-02-2002 (A.V. Sundaram & three others Vs. The District Collector, Trichy and another) holding that no writ lies against the first respondent requires to be reconsidered by a Larger Bench of this Court."

4. Before considering the above Reference in detail, brief facts which are required for answering the above Reference are stated hereunder:

It is the case of the petitioner that a very valuable piece of property comprising of a vacant land of an extent of 2.5 acres and a constructed building area of 34200 sq.ft. known as the Kalaiarangam in the heart of Trichy belonged to the State. The said land was under the administrative control of the then Municipality of Trichy (now Corporation of Tiruchirapalli). The details regarding formation and activities of the first respondent-committee have been stated in the affidavit filed at the time of filing of the writ petition as well as additional affidavit dated 7-2-2005 filed pursuant to the order dated 24-1-2005 of the Division Bench. The following details are available in both the affidavits. In 1962 one Gulam Mohamed Basha, I.A.S., then District Collector of Trichy, organised a District Cattle Fair and generated a surplus of Rs.642/-. Making the said amount as corpus, the District Collector along with Thiru Ka.P.V. Viswanathan, renowned Tamil scholar started an informal and unregistered association of persons called Trichy District Welfare Fund Committee. The very next year a State level cattle fair was organised in Trichy which generated a further sum of Rs.1,161.56 and in the same year, the Trichy Fire Department conducted a fire fighting demonstration which generated a further sum of Rs.8,513.70 all of which was donated to the Committee.

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5. In 1964, K. Chokalingam, I.A.S., District Collector brought the famous drama troupe TKS Nataka Sabha to Trichy and raised a sum of Rs.1,00,033/- which was also donated to the Committee. In 1968, K. Haribhaskar I.A.S., District Collector organised a huge dance performance by which he raised a sum of Rs.25 lakhs which was entirely donated to the State Government for the conduct of the World Tamil Conference. Since the said conference itself had a surplus, the entire sum of Rs.25 lakhs was returned in the name of the Committee for the purpose of constituting a medical college. Due to various reasons, a medical college could not be started and instead, an idea to start an Agricultural University was mooted for which purpose the Committee gave a donation to the then Chief Minister a sum of Rs.14 lakhs to be used as corpus for establishing the University. When this idea also did not fructify, the said amount of Rs.14 lakhs was returned back to the Committee.

6. In 1974, the then District Collector, M. Vaidyalingam, I.A.S., organised a programme for raising funds for setting up the Navalar Nedunchezian College and raised Rs.4,50,000/-, but since the college was not started, this amount was like wise retained in the name of the Committee. It was felt that huge amounts have been collected which needed to be utilised for some purpose and since the educational institutions were not materialising, it was felt that some permanent building could be constructed by the Committee. As suggested by the then District Revenue Officer, Trichy, the Government have issued a memo dated 15-6-1974 giving permission to the Committee to enter upon certain extents of land for the purpose of putting up an auditorium. On 6-8-1975 a society was formally registered under the name and style of "The District Welfare Fund Committee". Between 1975 and 1976 the said M. Vaidyalingam, District Collector organised one more public function for establishing the Rajaji Sanitorium and collected Rs.15 lakhs which amount was also given over to the Committee as the Sanitorium was not built. Another sum of Rs.4 lakhs was also given to the Committee by the District Collector from his District funds for the purpose of the building of an auditorium. By 1976, the building was completed and the "Kalaiarangam" was inaugurated with a cinema theatre and an auditorium for conducting conferences and meetings.

7. By 1986, when the society was celebrating its Silver Jubilee, over Rs.1,22,58,174.89 have been collected from public and substantial amounts expended on giving welfare to the poor and the needy of Trichy including construction of permanent premises for road side vendors and food stall operators. The lands on which the Kalaiarangam was constructed which the society had entered upon in 1974 under a memo was finally assigned absolutely in its favour by the State Government-vide G.O.Ms.No. 290 Revenue Department dated 13-02-1982 wherein specific reference is made to the earlier enter upon permission as also a clear stipulation that the assignment was being made for the

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express purpose of the construction of the Kalaiarangam. A total of 1.4988 Hec. of prime land in the heart of Trichy was given to the society for the above purpose for a nominal sum of Rs.4,83,900/- with 9% interest from the date of taking possession in 1974. The Government Order refers to various internal communications between the State Government and the District Collector and the District Revenue Officer and the Additional P.A. to the District Collector recommending the assignment. The aforesaid 3 senior District Officials are the Ex-officio President, Vice President and Secretary of the Society. The above facts would clearly demonstrate that the very origin, administration and maintenance of the society are deeply governed by the District Administration and can never be considered or equated to any other private society or association. The bye laws of the society provides that there can only be 33 members to the society at any point of time of which 22 shall be ex-officio Government servants of whom the three referred above hold the key Administrative posts.

8. The very aims and objects of the society as well as its source of funds (largely collected from the public through public functions organised for various specific purposes which never took place) and the fact that the funds of the society are being applied only for public charitable and welfare purposes in the District of Trichy, it cannot be stated that these activities are not public duties.

9. With reference to the averments stated in the affidavit filed at the time of the writ petition, the first respondent-Committee has filed a counter affidavit wherein it is stated that the writ petition is not maintainable. The Division Bench of this Court had already held on 26-2-2002 in W.P.No. 23534 and 26501 of 2001 and W.P.No. 1043 and 1896 of 2002 that the District Welfare Fund Committee (1st respondent herein) is not an instrumentality of the State and hence not amenable to writ jurisdiction. As far as the said committee is concerned, the award of lease to the second respondent is purely contractual and beyond the paramount interest of the committee by securing just returns for its property through dependable and solvent lessee nothing else matters. The property was transferred to the society by means of an assignment issued under G.O. 760/Rev/L2 dated 11-5-90 for a consideration of Rs.4,84,203/-. The amount was remitted by the society on 28-06-90. The funds were accumulated over a period of time by judicious conduct of the committee in conducting various cultural programmes and collecting donations through the public. The District Welfare Fund Committee is using every one of its resources only for the upliftment of the poor and downtrodden.

10. With reference to the same affidavit, the second respondent has filed a counter stating that the writ petition is not maintainable since the respondents against whom the relief was sought for is not amenable to writ jurisdiction under Article 226 of the Constitution of India. The other averments relate to merits of the

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case which we are not concerned.

11. For the additional affidavit dated 7-2-2005 giving more information and materials, respondents 1 and 2 have not filed counter affidavit. In the light of the materials, facts and figures, let us consider whether the first respondent committee is an instrumentality of the State or performing any public function and whether a Writ under Article 226 of the Constitution of India lies against the said Committee and also besides whether the decision rendered in 2005 1 L.W. 126 (cited supra) and order dated 26-02-2002 in Writ Petition Nos. 1043 and 1896 of 2002 and 23534 and 26501 of 2001 have been correctly decided.

12. Part III of the Constitution deals with Fundamental Rights. Article 12 defines "State" as under:

> "12. Definition.- In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

It is also relevant to refer Article 32 which speaks about right to Constitutional Remedies:

> "32. Remedies for enforcement of rights conferred by this Part.- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
>
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."

Article 226 enables High Courts to issue certain writs:

> "226. Power of High Courts to issue certain writs.- (1) Notwithstanding anything in article 32, every High Court shall have powers, throughout territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus,

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prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

13. The powers of the Supreme Court under Article 32 and High Court under Article 226 have been considered by the Supreme Court in large number of decisions. In the case of Shri Anadi Mukta Sadgiri S.M.V.S.J.M.S. Trust v. V.R. Rudani, reported in A.I.R. 1989 Supreme Court page 1607, the Supreme Court considered the writ jurisdiction of the High Court exercisable under Article 226 of the Constitution of India. The following conclusion of Their Lordships are relevant: (paras 19 and 21)

"19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226...."

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14. While considering the maintainability of the writ petition filed under Article 32 of the Constitution of India against Board of Control for Cricket in India (BCCI), the Supreme Court in Writ Petition (C) No. 541/2004 [M/S. Zee Telefilms Ltd., and another v. Union of India and others]- 2005 (1) SCALE p. 666 considered the term "State" under Article 12 and also considered the scope and interference under Article 32 by the Supreme Court and under Article 226 by the High Court. The main question for consideration before the Supreme Court was whether the 'Board' (BCCI) fell within the definition of the 'State' as contemplated under Article 12 of the Constitution. It was the argument of the Board that it did not come under the term "other authorities", hence it is not a State for the purpose of Article 12. After considering the decision in Sabhajit Tewary vs. U.O.I. & Others [(1975) 3 SCR 616] and Sukhdev Singh and others vs. Bhagatram Sardar Singh Raghuvanshi and another [1975 3 SCR 619], the Court held: (para 16)

> "16. The distinction to be noticed between the two judgments referred to hereinabove namely Sukhdev Singh & Ors and Sabhajit Tewary (supra), is that in the former the Court held that bodies which were creatures of the statutes having important State functions and where State had pervasive control of activities of those bodies would be State for the purpose of Article 12. While in Sabhajit Tewary's case the Court held a body which was registered under a statute and not performing important State functions and not functioning under the pervasive control of the Government would not be a State for the purpose of Article 12."

15. After referring to the decisions in Ramana Dayaram Shetty Vs. International Airport Authority of India & Others [AIR 1979 SC 1628 : 1979 3 SCR 1014] and Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and others [2002 5 SCC 111), Their Lordships concluded thus:

> "24. To these facts if we apply the principles laid down by seven Judge Bench in Pradeep Kumar Biswas (supra), it would be clear that the facts established do not cumulatively show that the Board is financially, functionally or administratively dominated by or is under the control of the Government. Thus the little control that the Government may be said to have on the Board is not pervasive in nature. Such limited control is purely regulatory control and nothing more.
>
> 25. Assuming for argument sake that some of the functions do partake the nature of public duties or State actions they being in a very limited area of the activities of the Board would not fall within the

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parameters laid down by this Court in Pradeep Kumar Biswas's case. Even otherwise assuming that there is some element of public duty involved in the discharge of the Board's functions even then as per the judgment of this Court in Pradeep Kumar Biswas (supra) that by itself would not suffice for bringing the Board within the net of "other authorities" for the purpose of Article 12.

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29.....Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient to hold the Board to be a State for the purpose of Article 12. While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally authorised the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self arrogated). In such circumstances when the actions of the Board are not actions as an authorised representative of the State, can it be said that the Board is discharging State functions? The answer should be no....

30...But this control over the activities of the Board cannot be construed as an administrative control. At best this is purely regulatory in nature and the same according to this Court in Pradeep Kumar Biswas's case (supra) is not a factor indicating a pervasive State control of the Board.

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law by way of a writ

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petition under Article 226 of the Constitution which is much wider than Article 32."

16. In General Manager, Kisan Sahkari Chini Mills Ltd., v. Satrughan Nishad, reported in (2003) 8 Supreme Court Cases 639, the Supreme Court had an occasion to consider "other authority" under Article 12. In that case, the appellant-Mill is a cooperative society registered as under the U.P. Cooperative Societies Act, 1965. The contesting respondents filed writ applications in the High Court alleging therein that they had worked on Class III and IV posts in the Mill for a period ranging from 5 to 12 years. The services of surplus workmen were dispensed with without giving any notice and paying retrenchment compensation as required under Section 6-N of the U.P. Industrial Disputes Act, 1947 in spite of the fact that they had worked for more than 240 days which necessitated filing of writ applications in the High Court. The said writ petitions were contested by the Mill on the grounds, inter alia, that the Mill, which is a cooperative society, was neither a 'State' nor an 'instrumentality' or 'agency of the State' within the meaning of Article 12 of the Constitution; hence the writ jurisdiction of the High Court could not be invoked. The learned Single Judge of the High Court over-ruled the preliminary objection raised on behalf of the Mill came to the conclusion that the Mill which is a Society within the meaning of Article 12 of the Constitution as it was an instrumentality of the State and there was infraction of the provisions of Section 6-N of the Act. Accordingly, the writ applications were allowed. The said order has been affirmed by the Division Bench on appeals being preferred by the Mill, hence the Mill has approached the Supreme Court by way of special leave. An argument was advanced before the Supreme Court stating that the contesting respondents could not have been allowed to invoke the writ jurisdiction of the High Court as the Mill, which is a registered cooperative society, was not State within the meaning of Article 12 of the Constitution as it was neither an instrumentality nor an agency of the Government of Uttar Pradesh. On the other hand, counsel appearing on behalf of the contesting respondents submitted that the Mill was an instrumentality of the Government, as such it was an authority within the meaning of Article 12 of the Constitution. The following discussion of the Supreme Court are relevant:-

"6. The point raised is no longer res integra as the same is concluded by decisions of this Court. In the case of Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722], a Constitution Bench of this Court, while approving the tests laid down in the case of Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489 as to when a corporation can be said to be an instrumentality or agency of the Government, observed at pp.736-37 which runs thus: (SCC para 9)

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"9. The tests for determination as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case (1979) 3 SCC 489. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities', it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the Corporation is an instrumentality or agency of Government. (SCC p.507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p.508, para 15)

(3) It may also be a relevant factor....whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p.508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p.508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p.509, para 16)

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government. (SC p.510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case (1979) 3 SCC 489, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

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> 7. In the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology [(2002) 5 SCC 111:2002 SCC (L&S) 633, a Bench of Seven Judges of this Court, in para 27 of its judgment has noted and quoted with approval in extenso the aforesaid tests propounded in International Airport Authority case [(1979) 3 SCC 489] and approved in the case of Ajay Hasia [(1981) 1 SCC 722] for determining as to when a corporation can be said to be an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12 of the Constitution. There the Bench referred to the case of Chander Mohan Khanna v. NCERT [(1991) 4 SCC 578] where, after considering the memorandum of association and the rules, this Court came to the conclusion that NCERT was largely an autonomous body and its activities were not wholly related to governmental functions and the government control was confined only to the proper utilisation of the grants and since its funding was not entirely from government resources, the case did not satisfy the requirements of the State under Article 12 of the Constitution. Further, reference was also made in that case to the decision of this Court in Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association where it was held that the company was an authority within the meaning of Article 12 of the Constitution as it was substantially financed and financially controlled by the Government, managed by a Board of Directors nominated and removable at the instance of the Government and carrying on important functions of public interest under the control of the Government."

After saying so, Their Lordships have further held that:

> "8. From the decisions referred to above, it would be clear that the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard-and-fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution."

Considering the ratio of the nominees of the State Government and the Management of the committee, Their Lordships have held: (para 8)

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> "8.....Under the bye-laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less a deep and pervasive one....."

At the end, an argument was advanced on behalf of the contesting respondents that even if the Mill is not the authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include any private person or body. On the other hand, learned counsel appearing on behalf of the appellant submitted that mandamus can be issued against a private person or body only if the infraction alleged is in performance of public duty. Finally the Court held thus: (para 9)

> "9.....Reference in this connection may be made to the decisions of this Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. V.R. Rudani [(1989) 2 SCC 691] in which this Court examined the various aspects and distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty that Article 226 of the Constitution can be invoked. In the cases of K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering [(1997) 3 SCC 571} and VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298] the same principle has been reiterated. Further, in the case of VST Industries Ltd., it was observed that manufacture and sale of cigarettes by a private person will not involve any public function. This being the position in that case, this Court held that the High Court has no jurisdiction to entertain an application under Article 226 of the Constitution. In the present case, the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involve any public function. Thus, we have no difficulty in holding that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked."

17. In Federal Bank Ltd., v. Sager Thomas [2003 (4) CTC 418], the question that arose for consideration was, whether Federal Bank which is a private bank is a State or its agency or instrumentality within the meaning of Article 12 of the Constitution of India and whether writ petition under Article 226 is maintainable. After referring all the earlier authorities, the Supreme Court has held: (para 18)

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"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

Ultimately the Court held that: (para 33)

"33.....A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

18. The next decision cited by learned counsel for 1st respondent is in the case of G. Bassi Reddy v. International Crops Research Institute, reported in AIR 2003 Supreme Court 1764. The appellants in that decision were employees of International Crops Research Institute ('ICRISAT' in short)/first respondent therein. Their services were terminated. They filed Writ Petitions before the High Court of Karnataka against ICRISAT and the Union of India. The Writ Petitions were dismissed on the ground that ICRISAT was not amenable to writ jurisdiction under Article 226 of the Constitution, and that a writ could not be issued to ICRISAT. Against the ruling of the High Court, the petitioners therein moved to Supreme Court. After considering earlier decisions and scope for issuance of writ under

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Article 226 of the Constitution by the High Court, Their Lordships have held: (paras 25 to 29)

> "25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed (Calcutta Gas Co. v. State of W.B., AIR 1162 SC 1044, 1047-1048). The claim as made by the appellant in his writ petition is founded on Arts. 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a 'State' or authority within the meaning of Art.12. The tests for determining whether an organization is either, has been recently considered by a Constitution Bench of this Court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others (2002) 5 SCC 111 at p.134 in which we said:
>
> "The question in each case would be-whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State".
>
> 26. The facts which have been narrated earlier clearly show that ICRISAT does not fulfil any of these tests. It was not set up by the Government and it gives its services voluntarily to a large number of countries besides India. It is not controlled by not is it accountable to the Government. The Indian Government's financial contribution to ICRISAT is minimal. Its participation in ICRISAT's administration is limited to 3 out of 15 members. It cannot therefore be said that ICRISAT is a State or other authority as defined in Article 12 of the Constitution.
>
> 27. It is true that a writ under Article 226 also lies against a 'person' for 'any other purpose'. The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any one of the writs mentioned would according to well established principles issue.

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28. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corporation v. C.V. Imanual, (1969) 1 SCC 585; Andi Mukta Sadguru Trust v. V.R. Rudani, (1989) 2 SCC 691, 698; VST Ind.Ltd. v. VST Ind. Workers' Union and another (2001) 1 SCC 298. ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. Besides ICRISAT has a role which extends beyond the territorial boundaries of India and its activities are designed to benefit people from all over the world. While the Indian public may be the beneficiary of the activities of the institute, it certainly cannot be said that the ICRISAT owes a duty to the Indian public to provide research and training facilities. In Praga Tools Corporation v. C.V. Imanual, AIR 1960 SC 1306, this Court construed Article 226 to hold that the High Court could issue a writ of mandamus "to secure the performance of the duty or statutory duty" in the performance of which the one who applies for it has a sufficient legal interest". The Court also held that:

".....an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute (See Sohan Lal v. Union of India, 1957 SCR 738).

29. We are therefore of the view that the High Court was right in its conclusion that the writ petition of the appellant was not maintainable against ICRISAT."

19. In Virendra Kumar Srivatsava v. U.P. Rajya Karmachari Kalyan Nigam, reported in (2005) 1 Supreme Court Cases 149, the sole point that arose for decision before the Supreme Court was, whether U.P. Rajya Karmachari Kalyan Nigam (Corporation) was covered by the definition of 'State' under Article 12 of the Constitution and was amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. In that case the services of the petitioner had been

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terminated from the post of salesman in one of the stores of the Corporation, against which he had approached the High Court, Allahabad. A preliminary objection was raised by the Corporation to the maintainability of the writ petition on the ground that the Corporation does not fall in the definition of "State" under Article 12 of the Constitution. Relying on decisions of the Lucknow Bench of the same Court in the case of Vijay Kumar Verma v. U.P. Govt. Employees Welfare Corporation [W.P.No. 8246 (SS) of 1992, decided on 13-4-1993], the writ petition filed by the petitioner in the High Court was dismissed as not maintainable, against which the petitioner has preferred the appeal to the Supreme Court. After analysing the factual materials and various factors, ultimately Their Lordships have concluded thus: (para 27)

> "27. On detailed examination of the administrative, financial and functional control of the Corporation, we have no manner of doubt that it is nothing but an "instrumentality" and agency of the State" and the control of the State is not only "regulatory" but it is "deep and pervasive" in the sense that it is formed with the object of catering to the needs of the government employees as a supplement to their salaries and other perks. The top executives of the government department ex officio are members and office-bearers of the Corporation. The Corporation is fully supported financially and administratively by the State and its authorities. Even day-to-day functioning of the Corporation is watched, supervised and controlled by the various departmental authorities of the State particularly the Department of Food and Civil Supplies. The multiple test indicated to be applied both by the majority and minority view in Pradeep Kumar Biswas [(2002) 5 SCC 111] is fully satisfied in the present case for recording a conclusion by us that the Corporation is covered as an "agency and instrumentality of the State" in the definition of "State" under Article 12 of the Constitution. It is, therefore, amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution."

20. In Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, reported in (2002) 5 Supreme Court Cases 111, the Constitution Bench of the Supreme Court reconsidered the decision taken in Sabhajit Tewary (1975) 1 SCC 485. Out of 7 Hon'ble Judges, the majority view of 5 Hon'ble Judges is as follows: (para 40)

> "40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [(1981) 1 SCC 722: 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the

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meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

By applying various tests enunciated in the above mentioned decisions and considering the facts relating to Council of Scientific and Industrial Research (CSIR), the Supreme Court found that the same is well within the range of Article 12. It is to be noted that CSIR was set up by the Department of Commerce, Government of India with the broad objective of promoting industrial growth in the country. On 14-11-1941, a Resolution was passed by the Legislative Assembly and accepted by the Government of India. The objects which have been incorporated in the memorandum of association of CSIR demonstrate that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned industrial development in the country. CSIR was and continues to be a non-profit-making organization and according to clause 4 of CSIR's memorandum of association, all its income and property, however derived shall be applied only towards the promotion of those objects subject nevertheless in respect of the expenditure to such limitations as the Government of India may from time to time impose. The details regarding management and control show the dominant role played by the Government of India in the Governing Body of CSIR is evident. The Prime Minister shall be the ex officio President of CSIR. The Governing Body is required to administer, direct and control the affairs and funds of the Society and shall, under Rule 43, have authority to exercise all the powers of the Society subject nevertheless in respect of expenditure to such limitations as the Government of India may from time to time impose. This is evident that the financial control lies with the Government. After analysing all the relevant aspects, as the majority view, the Supreme Court ruled that CSIR is a State within the meaning of Article 12 of the Constitution.

21. In Chander Mohan Khanna v. N.C.E.R.T., reported in (1991) 4 Supreme Court Cases 578, the question that was considered was, whether the National Council of Educational, Research and Training (NCERT)is 'State' as defined under Article 12 of the Constitution. The NCERT is a society registered under the Societies Registration Act. After verifying its object, programmes, activities, funding, and considering the fact that the Government has got limited control only to proper utilisation of the grant, the Court ultimately concluded that NCERT is largely an autonomous body and does not fall within the

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definition of 'State' under Article 12.

22. The picture that emerges from the above case-laws is in the following:

(i) In the case of U.P. Rajya Karamchari Kalyan Nigam [(2005) 1 SCC 149]:

The same was established by the State Government and wholly financed by the Government to carry on and promote activities aimed at the welfare of the employees of State Government. All office bearers of Governing Body are Government servants. The only Government employees can be inducted as members of the Corporation and that too with the previous approval of the State Government. The Rules of Corporation can be amended, varied or deleted only with prior approval of the State Government. Upon winding up, the assets to be distributed in the manner determined by the State Government. The Corporation comes under 'State' and is amenable to writ jurisdiction of High Court under Article 226 of the Constitution of India.

(ii) In the case of Board of Control for Cricket in India (B.C.C.I) (2005 (1) SCALE 666):

it is recognised by Government of India as the apex National body for regulating the game of cricket in India. It selects players to represent India in matches. It makes Rules governing activities of cricket players and umpires. It is the sole authority for organizing major cricketing events in India. The Government of India accepts recommendations of BCCI in regard to awarding 'Arjuna Awards' to cricketers. It enjoys monopoly status in the field of cricket. The majority view of the Supreme Court is that the BCCI is not a 'State' within the meaning of Article 226 of the Constitution of India.

(iii) In the case of N.C.E.R.T. [(1991) 4 SCC 578]:

The same was set up as a society with 7 Government officers subscribing to the memorandum of association. The object of the council is to assist and advise the Ministry of Education and Social Welfare in the field of education particularly school education. The income and property to be applied towards promotion of objects only. The expenditure on grants subject to limitations was placed by the Government of India. The Government could review the work and take action to give effect to reports. The Governing council consists mainly of Government officials but also includes educationalists. The N.C.E.R.T is not a 'State' under Article 12 of the Constitution of India.

(iv) In the case of Kisan Sahkari Chini Mills Ltd., ('Mill' in short) [(2003) 8 S.C.C. 639:

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It is a cooperative society. 50 per cent of its shares are held by State Government. Membership to this Mill is open to cane growers, other societies etc. Its committee of management has 15 members, out of which 5 are nominated by the State Government. The State Government cannot issue any direction to the Mill or determine its policy. The manufacture and sale of sugar does not involve any public function. Hence, the Mill is not a 'State' within the meaning of Article 12 of the Constitution of India.

23. In Karuppan v. The Patron of Chennai Rifle Club, Chennai, reported in (2004) 1 M.L.J. 153, a Division Bench of this Court, after considering the formation, object and the activities of Chennai Rifle Club and after analysing various case laws on the point, held that a writ would not lie against the Chennai Rifle Club and the said authority will not come within the purview of Article 226. In that case, the Commissioner of Police is the President of Rifle Club. Still the Division Bench found that the club is not an instrumentality of the State and has not discharged any public duty. The said decision will apply in all fours to the present case.

24. Now we shall consider the involvement of Government officials such as District Collector, District Revenue Officer, Revenue Divisional Officer etc., as ex officio office bearers of the 2nd respondent Society. As per Rule 8 (1) (a)of Tamil Nadu Government Servants' Conduct Rules, 1973, no Government servant shall be permitted to engage himself directly or indirectly in any trade or business or undertake any employment without previous sanction of the Government. However, without such sanction, Government servant can undertake honorary work of a social or charitable nature or occasional work of literary, artistic or scientific character, or participate in sports activities as an amateur, subject to the condition that his official duties do not thereby suffer. As per Rule 2, no Government servant shall, except with the previous sanction of the Government, take part in the registration, promotion or management of any bank or company registered under the Banking Companies Act, 1949 or the Indian Companies Act, 1913, or the Companies Act, 1956 or any other law for the time being in force. Proviso enables a Government servant, subject to sub-rules (7) to (10), to take part in the registration, promotion or management of a Co-operative Society registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1961, or any other law for the time being in force or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 or any other law for the time being in force. However, the duty of a Government servant shall not thereby suffer. The above provision makes it clear that the Government servants who are associated with the +committee are doing so purely in private capacity. Rule 8 of the Tamil Nadu Government Servants Conduct Rules permits the government servants to be members of charitable bodies and hold honorary posts without the prior sanction of the Government.

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25. After a careful analysis of the above discussion, we are of the view that whether a body is a 'State' as defined under Article 12 of the Constitution will have to be determined by applying the tests laid down in Pradeep Kumar Biswas's case [(2002) 5 SCC 111]. The multiple test laid down therein is whether in the light of cumulative facts as established the body is financially, functionally and administratively dominated by or under the control of the Government. When the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a 'State'. The control must be deep and pervasive. In Zee Telefilms Vs. Union of India (2005 (1) SCALE 666) the Honourable Supreme Court in the penultimate paragraph of the judgment of the majority has been pleased to hold that the decision in Sukhdev Singh's case [(1975) 3 SCR 619] expanding the definition of the term "other authorities" to include bodies other than statutory bodies was given in the context of the situation prevailing at that time. They further held that in view of the present socio-economic policy of the Government where the State is distancing itself from commercial activities and concentrating on governance, it has been held that there is no necessity to further expand the scope of the term "other authorities" occurring in Article 12 of the Constitution.

26. In cases where the body has been held to be an authority under Article 12, the Government invariably has had the power to control the functioning of the body by issuing directions, controlling expenditure etc. In Pradeep Biswas's case (supra), the Council of Scientific and Industrial Research (CSIR) was held to be a State on the basis that it was set up by the Department of Commerce, Government of India, to carry on activities earlier done by Department of Commerce. It was set up in the national interest to further the economic welfare of society by fostering planned industrial development. The Prime Minister is its ex officio President. Its Director General is appointed by the Government of India. The power to frame, amend or repeal bye-laws can be done only with the sanction of Government of India. All decisions can be reviewed by the Prime Minister and his orders are binding on governing body, As far as the employees of CSIR are concerned, the Central Civil Services (Classification, Control and Appeal) Rules and the Central Civil Services (Conduct) Rules are applicable to them. The scales of pay applicable to all the employees of CSIR are those prescribed by Government of India for similar personnel. CSIR cannot lay down or change the terms and conditions of service of its employees and any alteration in the bye-laws can be carried out only with the approval of the Government of India. Initial capital as well as 70 per cent of the funds have been provided by Government of India. The Government of India can impose limitation on expenditure. The accounts of CSIR are required to be audited by the Comptroller and Auditor General and placed before the Parliament. In the event of dissolution, the assets of the CSIR shall have to be dealt with in the manner determined by the Government.

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27. In the case of first respondent- District Welfare Fund Committee, there is no functional, financial, or administrative control by the Government. The Government servants who are associated with the Committee are doing so purely in private capacity. The first respondent is a Society and "Mandram" building is the private property of the Society. The Society is not getting any financial aid from the State and there is no pervasive control by the State over the Society. It is not discharging any public duty. Though the successive District Collectors by involving themselves collected necessary funds by conducting Dramas and Cultural Programmes, originally either for formation of a medical college or an agricultural college, the fact remains that the funds were diverted to the corps of the Society, which paved way for the formation of "Kalaiarangam". Admittedly, money has not been contributed by the Government. Likewise, the Government officials are part of the Society as ex-officio and not under orders and permission of the Government. As ruled in AIR 2003 SC 1764 (supra), although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. We are satisfied that the Committee is not discharging or conducting State functions and the Government has no pervasive control much less regulatory control over the Society. As said earlier, the funds were accumulated through various cultural programmes and financed from the public. The land was assigned to the Society by the Government for a consideration of Rs.4,84,203/-. The property possessed is the 'Kalaiarangam' and office complex. The rent derived from the above properties is the main source of income to the Society and there is no financial assistance from the Government. The accounts are being audited by a qualified Chartered Accountant. No power was given to the Government to issue directions. The Membership of the Society is restricted to 33 of whom 22 are Government officers who are ex-officio members, and 11 are drawn from among reputed social workers, educationalists, professionals etc. Upon dissolution, the assets of the Society are transferable to other associations with identical objects. The first respondent-Society thus cannot be construed as an instrumentality of the State or other authority as defined in Article 12 of the Constitution. When the body is a private body but performs statutory functions or discharges public duties, a writ would lie. No writ would lie when the rights purportedly infringed are merely private rights. The action complained of in the writ petition relates to grant of lease of the "Kalaiarangam" by way of Tender. There is no statutory or public duty or function involved and the right of the first respondent to grant a lease is purely private. As the first respondent Society is not an authority as defined in Article 12 and as the action complained of is that of a private body exercising private functions, we hold that the writ petition will not be maintainable.

28. In the light of our discussion, we hold that the first respondent Society is not an 'Authority' or 'State' as defined in

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Article 12 of the Constitution of India. It is also not a "Body or instrumentality" as could be made amenable to writ jurisdiction under Article 226 of Constitution of India; hence the Writ Petition filed against it is not maintainable and the same is dismissed. No costs. We approve the Division Bench decision rendered in W.P.Nos. 1043 and 1896 of 2002 and 23534 and 26501 of 2001 dated 26-02-2002 (A.V. Sundaram and three others Vs. The District Collector, Trichy and another). The Reference is answered accordingly. The connected W.P.M.P., is closed.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
1. The President/District Collector,
   District Welfare Fund Committee,
   Mc. Donalds Road, Cantonment, Trichy-1.

2. The Commissioner,
   Land Administration, Chennai-5.

One cc to M/s P.R.Raman, Advocate SR.14562.

One cc to M/s R.Natarajan, Advocate SR.14407

one cc to Govt. Pleader SR.14329.

One cc to M/s R.Yashod Varadhan, Advocate SR.14118.

W.P.No. 18366 of 2003
and WPMP No.22963 of 2003

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